



**IT IS ORDERED as set forth below:**

**Date: February 25, 2009**

*James E. Massey*

James E. Massey  
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

\_\_\_\_\_  
IN RE:

CASE NO. 08-79618

Miami Entertainment, Inc.,

CHAPTER 11

Debtor.  
\_\_\_\_\_

JUDGE MASSEY

Darby Bank, Its Successors and/or Assigns,

Movant,

v.

CONTESTED MATTER

Miami Entertainment, Inc.,

Respondent.  
\_\_\_\_\_

ORDER DENYING MOTION FOR STAY RELIEF

Movant filed a motion for relief from the automatic stay on January 16, 2009, which it served on Debtor, Debtor's counsel and the United States Trustee. The motion seeks stay relief on real and personal property that the Debtor valued in its schedules at excess of \$2,500,000 to that secures a claim of movant that the Debtor says is in excess of \$1,867,000. Movant has not

filed a proof of claim. A hearing on the motion was scheduled for February 10, 2009, but the Court did not hear the matter because Debtor and Movant agreed to terms on which the stay would be modified. The parties then presented a consent order pursuant to which the stay would be modified to permit foreclosure if Debtor failed to make certain payments. Debtor has filed only one operating report for the month of November 2008. There is no creditor's committee in this case, but Debtor scheduled debts of 8 unsecured creditors totaling more than \$150,000 and a priority debt owed to the Georgia Department of Revenue, which has filed a total claim in excess of \$200,000.

Rule 4001(a) of the Federal Rules of Bankruptcy Procedure provides:

(a) Relief from stay; prohibiting or conditioning the use, sale, or lease of property

(1) Motion

A motion for relief from an automatic stay provided by the Code or a motion to prohibit or condition the use, sale, or lease of property pursuant to § 363(e) shall be made in accordance with Rule 9014 and shall be served on any committee elected pursuant to § 705 or appointed pursuant to § 1102 of the Code or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d), and on such other entities as the court may direct.

Bankruptcy Rule 4001(d) provides:

(d) Agreement relating to relief from the automatic stay, prohibiting or conditioning the use, sale, or lease of property, providing adequate protection, use of cash collateral, and obtaining credit

(1) Motion; Service

(A) Motion

A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

- (i) an agreement to provide adequate protection;
- (ii) an agreement to prohibit or condition the use, sale, or lease of property;

- (iii) an agreement to modify or terminate the stay provided for in § 362;
- (iv) an agreement to use cash collateral; or
- (v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property.

(B) Contents

The motion shall consist of or (if the motion is more than five pages in length) begin with a concise statement of the relief requested, not to exceed five pages, that lists or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement. In addition, the concise statement shall briefly list or summarize, and identify the specific location of, each provision in the proposed form of order, agreement, or other document of the type listed in subdivision (c)(1)(B). The motion shall also describe the nature and extent of each such provision.

(C) Service

The motion shall be served on: (1) any committee elected under § 705 or appointed under § 1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under § 1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs.

Because Movant failed to serve its motion or proposed agreement with Debtor on the creditors on the list filed pursuant to Bankruptcy Rule 1007(d) (see document no. 16), the motion is DENIED.

\*\*\*END OF ORDER\*\*\*